

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
ROBERT J. GLADWIN, JUDGE

DIVISION IV

CA06-610

MARCH 21, 2007

FRANCISCO LOREDO

APPELLANT

APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT  
[NO. J2004-751-D/N]

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

HON. JAY FINCH,  
JUDGE

AFFIRMED

Appellant Francisco Loredó appeals the order of the Benton County Circuit Court terminating his parental rights with respect to his minor daughter. On appeal, appellant challenges the sufficiency of the evidence supporting the order of termination of parental rights. We affirm.

Appellant is the legal father of A.L., a daughter, born December 22, 2002. At the time of the termination hearing he had been incarcerated in the federal prison in El Reno, Oklahoma, and previously in Louisiana, continuously since September 30, 2002. He was serving a five-year sentence for being in this country illegally for the second time and for

using fraudulent identification documentation. He met A.L. only once, when she was approximately three months old. The meeting occurred when his wife's mother brought A.L. to visit him in prison in early 2003. His only other contact with the child had been letters and greeting cards he sent to A.L.

On September 26, 2004, appellee Arkansas Department of Human Services (DHS) took appellant's child into custody after the child's mother, Aymee Zamarripa, abandoned her, leaving her in the care of a Ms. Miramontes, whom she had met briefly on two prior occasions. DHS filed a petition for emergency custody on September 29, 2004, a probable-cause order was entered on October 27, 2004, and an adjudication order was filed on December 22, 2004. A.L.'s custody was continued with DHS throughout the review hearings and permanency-planning process.<sup>1</sup> On November 22, 2005, DHS filed a petition for the termination of appellant's parental rights, and the termination hearing was scheduled for January 3, 2006. The hearing was continued to January 31, 2006, in order for appellant to be able to participate fully, via telephone, from prison. The trial court subsequently entered an order terminating appellant's parental rights on February 22, 2006, finding that it was in the best interest of the child to terminate appellant's parental rights and noting that

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<sup>1</sup>Maternal parental rights were terminated on February 15, 2005. A no-merit appeal was filed, and this court affirmed the termination and granted counsel's motion to be relieved as counsel in an unpublished opinion, 2006 WL 122437 on January 18, 2006.

the current foster parents had expressed interest in adopting her.<sup>2</sup> Appellant filed a timely notice of appeal on March 9, 2006.

In cases involving the termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005); *Trout v. Ark. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004); *Kight v. Ark. Dep't of Human Servs.*, 94 Ark. App. 400, \_\_\_ S.W.3d \_\_\_ (2006). This is because termination of parental rights is an extreme remedy in derogation of the natural rights of the parents. *Camarillo-Cox, supra*. Nevertheless, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.* Thus, parental rights must give way to the best interest of the child when the natural parents seriously fail to provide reasonable care for their minor children. *Id.*

Arkansas Code Annotated section 9-27-341(b)(3) (Supp. 2005) requires that an order terminating parental rights be based upon clear and convincing evidence. *See also Dinkins v. Ark. Dep't of Human Servs.*, 344 Ark. 207, 40 S.W.3d 286 (2001). Clear and convincing evidence is that degree of proof that will produce in the factfinder a firm conviction as to the allegation sought to be established. *Id.* It is well settled that when the burden of proving

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<sup>2</sup>Appellant's mother, who lives in Texas, was present at the majority of the hearings and maintained some level of visitation with A.L. during the course of the case. She expressed interest in having the child placed with her. While that was also appellant's preference and DHS attempted to work with the authorities in Texas to that end, the efforts were unsuccessful.

a disputed fact is by clear and convincing evidence, the question that must be answered on appeal is whether the trial court's finding that the disputed fact was proven by clear and convincing evidence was clearly erroneous. *Id.* In making this determination, we review the case de novo, but we give a high degree of deference to the trial court, as it is in a far superior position to observe the parties before it and judge the credibility of the witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.*

Appellant does not contest the finding that A.L. had been out of his custody for a period of more than twelve months, as set forth in Arkansas Code Annotated section 9-27-341(b)(3)(B)(i)(a). She was three-years old at the date of termination, and because appellant had been incarcerated since before her birth, he had never had physical custody of A.L. At the time of the hearing on the petition for termination of his parental rights, A.L. had, however, been in DHS's custody for sixteen months.

Appellant does take issue with the finding that he had been sentenced in a criminal proceeding for a period of time that would constitute a substantial period of A.L.'s life, as set out in Arkansas Code Annotated section 9-27-341(b)(3)(B)(vii). It is undisputed that he had been incarcerated since approximately three months prior to her birth and was scheduled to remain incarcerated for at least thirteen additional months subsequent to the termination hearing. The relevant statute was amended in 2003 to remove the requirement that the

sentence be at least fifteen years to be considered substantial. Additionally, it appears from the testimony that appellant was to be deported back to Mexico directly following his release from prison. He informed the trial court that he wants to reenter the United States legally, but no evidence was presented as to how, if, or when that would occur. These circumstances clearly increase the time that would pass before he would possibly be able to care and provide for his daughter. A five-year sentence may not seem substantial when viewed over the course of A.L.'s entire lifetime; however, at this point in her life it has been, and is likely to continue to be, a substantial separation. While appellant seemed sincere in his expression of feelings for A.L. to the trial court, he remained incarcerated, had seen her only one time, and sent her a few cards and letters, which does not equate to having the means and ability to support her. Although the mere fact that appellant was incarcerated at the time of the termination hearing is not dispositive, this court has held that imprisonment does not toll a parent's responsibilities toward his children. *See Johnson II v. Ark. Dep't of Human Servs.*, 78 Ark. App. 112, 82 S.W.3d 183 (2002). DHS reiterates that the child was not removed from his custody, and reunification was never an appropriate case-plan goal because of appellant's criminal behavior and prison sentence.

Appellant also complains that he was not made a part of the case plan. Despite the fact that counsel was appointed for him upon the establishment of legal paternity, appellant never objected to the case plan or suggested or requested services from DHS that could have been provided to him. DHS asserts, and we agree, that a contemporaneous objection and

ruling is required to preserve a due-process issue. *See Rodriguez v. Ark. Dep't of Human Servs.*, 360 Ark. 180, 200 S.W.3d 431 (2004). Appellant failed to specifically challenge the various grounds for termination and does not cite where in the record he attempted to preserve his arguments for appeal. *See Benedict v. Ark. Dep't of Human Servs.*, \_\_ Ark. App. \_\_, \_\_ S.W.3d \_\_ (Nov. 1, 2006); *Myers v. Ark. Dep't of Human Servs.*, 91 Ark. App. 53, 208 S.W.3d 241 (2005). DHS refers to numerous grounds upon which the termination was based, including the following: (1) failure to remedy his circumstances; (2) failure to maintain significant contacts; (3) failure to provide material support; (4) abandonment; (5) incarceration for extended period; (6) aggravated circumstances. DHS is required to prove only a single ground.

Maintaining our focus on A.L., the evidence before us shows that she had been in DHS's custody for more than twelve months, adjudicated dependent-neglected, and despite reasonable efforts to correct the conditions that caused removal, the circuit court determined that she could not be returned to appellant within a reasonable period of time, as viewed from the child's perspective. *See Johnson II, supra*. At a minimum, there was clear and convincing evidence that appellant was unable to remedy his circumstances because of the prison sentence and upcoming deportation proceeding, in addition to being unable to maintain significant contact with or provide material support for A.L. The circuit court determined that it was in her best interest to terminate appellant's parental rights and for her to be adopted. There was evidence that at her young age and with her lack of special needs

she would be easily adopted; and in fact, her current foster parents had expressed interest in adopting her. Based upon our review of the record, we hold that there was clear and convincing evidence warranting termination pursuant to Arkansas Code Annotated section 9-27-341(b)(3) and prior case law from both this court and the supreme court, and that the trial court was not clearly erroneous in terminating appellant's parental rights.

Affirmed.

ROBBINS and GRIFFEN, JJ., agree.